



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18052168

Date: SEP. 7, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established eligibility as a member of the professions holding an advanced degree and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for second preference classification and for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In addition to the definition of “advanced degree” provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.”

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. The initial cover letter claimed that the Petitioner "is eligible for EB-2 classification as a member of the professions holding an advanced degree . . . once he holds a bachelor's degree in Science of Computer Engineering at the University of [REDACTED] Brazil."⁴ In addition, the cover letter asserted that he "started working as a trainee in systems analyst at [REDACTED] while attending the University for Bachelor's in Computer Engineering" and "[a]fter a few years, in 2012, [the Petitioner] started his own IT company, [REDACTED] The Petitioner also provided a statement indicating that he "ha[s] incomplete higher education – Bachelor in Computer Engineering from [REDACTED] University in [REDACTED] Brazil" and included certificates showing his completion of various professional courses and classes. The Director issued a request for evidence (RFE) indicating:

The personal statement you provided stated that you received a bachelor's degree in computer engineering from [REDACTED] University in [REDACTED] Brazil. However, after reviewing the evidence submitted there is no documentation of your bachelor's degree. The only educational documentation is the professional certificates. Furthermore, no evidence was submitted that shows you possess at least five years of progressive post-baccalaureate experience in your specialty. Please provide a copy of

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner did not claim eligibility as an individual of exceptional ability.

your degree or diploma along with official transcripts and letters from current or former employers that show at least five years experience in the specialty.

In response, the cover letter stated:

The petitioner/beneficiary is a highly recognized professional and very respected by his colleagues and bosses. He attended the higher education course of Computer Engineering in 2009 but did not complete the graduation. He believes that a diploma is a milestone, a form to show victory after years of extreme work and dedication. However, he also believes that a diploma does not define someone's ability, as many successful entrepreneurs built great works without having a diploma.

In addition, the Petitioner provided another statement indicating:

I have an incomplete Higher Education in Bachelor of Computer Engineering from Universidade [redacted] Brazil. Despite not having completed my graduation, I believe that a diploma is a milestone in life and means a victory after years of extreme work and dedication. However, at the same time, I believe that a diploma does not define someone's ability. We can see this every day seeing many successful entrepreneurs build great legacies without needing a diploma to do so.

The Petitioner also submitted a copy of his resume reflecting an "Incomplete degree – Attended for 3 years" under his education experience. Further, he presented his worker's card and documentation relating to [redacted]. In denying the petition, the Director concluded:

In statements provided by the petitioner and counsel of record, they have stated that the [Petitioner] is not in possession [of] a U.S. foreign equivalent of a bachelor's degree in computer engineering. However, the [Petitioner] in their personal statement said "that a diploma is a milestone in life after years of work and dedication but a diploma does not define someone's ability" while this [is] the belief of the [Petitioner] it is not documentary evidence that shows possession of an advanced degree.

On appeal, the Petitioner repeats his RFE response letter claims. We agree with the Director that the Petitioner did not demonstrate his eligibility as a member of the professions with an advanced degree. In order to show an individual holds an advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, the Petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The record does not reflect that the Petitioner possesses either a foreign equivalent degree of a United States advanced degree or a foreign equivalent of a United States baccalaureate degree with at least five years of progressive post-baccalaureate experience in the specialty. The Petitioner repeatedly stated, and maintains on appeal, that he did not complete or receive a baccalaureate degree from [redacted].

[redacted] University or from any other university.⁵ Therefore, the Petitioner did not establish that he qualifies as a member of the professions holding an advanced degree pursuant to section 203(b)(2)(A) of the Act and 8 C.F.R. § 204.5(k)(2). Furthermore, as he did not receive such a degree, the Petitioner did not demonstrate that he has at least five years of progressive post-baccalaureate experience in the form of employer letters consistent with 8 C.F.R. §§ 204.5(k)(2) and (k)(3)(i)(B).

III. CONCLUSION

The Petitioner did not establish that he qualifies for the underlying EB-2 visa classification as an advanced degree professional. As a result, we need not reach a decision whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve this issue.⁶ The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁵ The record does not contain an official academic record showing that he received a baccalaureate degree, let alone that he ever attended [redacted] University. See 8 C.F.R. § 204.5(k)(3)(i)(A).

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).